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# NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

## THESIS

**REAL IDENTIFICATION ACT REQUIREMENTS FOR  
STATE-ISSUED DRIVERS' LICENSES AND  
IDENTIFICATION CARDS: A POLICY ANALYSIS**

by

Joseph A. Giuliani

December 2007

Thesis Advisor:  
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Christopher Bellavita

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**REAL IDENTIFICATION ACT REQUIREMENTS FOR STATE-ISSUED  
DRIVERS' LICENSES AND IDENTIFICATION CARDS: A POLICY ANALYSIS**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

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## ABSTRACT

Identification documents such as state issued DL/ID cards are commonly accepted in the U.S. as a valid form of identification, and once obtained allow the holder access to move about the country legally. In order to prevent terrorists from illegally obtaining state issued DL/ID cards the 9/11 commission recommended the federal government establish national standards for the state issuance of DL/ID cards. The federal government responded to this recommendation by implementing the Real Id Act of 2005 (RIDA). The act establishes minimum standards for the issuance of state issued DL/ID cards. After reviewing the Act, the National Conference of State Legislatures (NCSL) made the following four key recommendations needed to successfully implement the law: 1) Ensure that document verification systems are available nationally, 2) Allow states to adopt up to a ten year reenrollment process, 3) Exempt certain populations from the RIDA process, and 4) Provide the necessary federal funding to comply with the law. Eugene Bardach's *A Practical Guide for Policy Analysis* provides an eightfold path to more effective problem solving. His model will be applied to assess the implementation of the Act. Providing an analysis of the implementation of this policy from the federal government's perspective and the NCSL's perspective is essential in determining the best course of action for implementing RIDA. The policy implications scholars and decision makers derive from an analysis of RIDA are important for current and future U.S. Homeland Security policy decisions regarding identification security. This thesis will provide such an analysis.



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## I. INTRODUCTION

### A. BACKGROUND

The requirements to obtain a drivers' license or identification card in the U.S. varies from state to state. Identification documents such as state issued drivers' licenses and identification cards are commonly accepted in the U.S. as a valid form of identification, and once obtained allow the holder access to move about the country legally. The Staff Report of the National Commission on Terrorist Travel, *9/11 and Terrorist Travel*, identified that the 9/11 hijackers were able to obtain legal forms of state identification widely accepted in the U.S., such as drivers' licenses, allowing them freedom to plot and execute their attack by providing legal access to car rentals and aircraft boarding.<sup>1</sup>

The ability for terrorists to easily obtain state identification presents a significant gap in domestic security. In order to prevent terrorists from illegally obtaining state issued drivers' licenses and identification cards the 9/11 commission recommended the federal government establish national standards for the state issuance of drivers' licenses and identification cards.<sup>2</sup> The federal government responded to this recommendation through a series of legislative actions that resulted in a new policy mandating that states meet prescribed national standards for issuing drivers' licenses and identification cards. This new federal policy was enacted in Public Law 109-13, Title II "Improved Security for Drivers' Licenses and Identification Cards," Section 202 (Minimum Document Requirements and Issuance Standards for Federal Recognition) Division B, the Real Id Act of 2005 (RIDA).<sup>3</sup> The act establishes minimum standards for the issuance of state drivers' licenses and identification cards that federal agencies would accept after May 11, 2008 and repeals the negotiated rulemaking committee for driver's licenses and

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<sup>1</sup> Staff Report of the National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel* (Tennessee: Hillsboro Press, 2004), 7.

<sup>2</sup> Final Report of the National Commission on Terrorist Attacks Upon the United State, *The 9/11 Commission Report* (New York: W. W. Norton and Company, 2004), 390.

<sup>3</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), 82.

identification cards under the Intelligence Reform Act of 2004.<sup>4</sup> This thesis will provide a policy analysis of the federal government's implementation of the RIDA.

## **B. AN ASSESSMENT MODEL: BARDACH'S EIGHTFOLD PATH**

Eugene Bardach's *A Practical Guide for Policy Analysis* provides an eightfold path to more effective problem solving.<sup>5</sup>

**Step 1: Define the Problem.**

**Step 2: Assemble Some Evidence.**

**Step 3: Construct the Alternatives.**

**Step 4: Select the Criteria.**

**Step 5: Project the Outcomes.**

**Step 6: Confront the Trade-offs.**

**Step 7: Decide.**

**Step 8: Tell Your Story**

His model will be applied to assess the implementation of the RIDA Act. By using this model this thesis will describe the problems with drivers' licenses and identification cards that the federal government will try to solve with RIDA. The model will also describe the problems with implementing RIDA identified by the NGA. After reviewing the problems with RIDA this thesis will conclude by offering several alternative courses of action that might be taken. Each course of action offered by this thesis will also provide a set of projected outcomes based on criteria selected for the model.

## **C. PURPOSE**

While reviewing the literature on RIDA, no known documents that specifically analyze or debate the federal governments' view on implementing RIDA compared to the

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<sup>4</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 1.

<sup>5</sup> Eugene Bardach, *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving* (New York, Seven Bridges Press LLC, 2000) xiv.

National Governor Associations' view on implementing RIDA were found. This thesis will attempt to fill this gap in literature on RIDA. The debate over the need for such a policy, both from the federal government's perspective and the perspective of the state institutions that must implement the mandate, makes this analysis important to national leaders. With an estimated cost of \$23 billion over the next ten years to implement, a number of states have taken legislative action urging the federal government to repeal the act. The federal government's expectation is that the majority of the estimated funding required to implement will come from state governments. Thus the RIDA mandate is important for both scholarly and political debate. What if the policy requirements of RIDA do little to actually stop terrorists from legally obtaining state issued drivers' licenses and identification cards? Will the American public be at greater risk to identity theft because of RIDA? Are the federal timelines for state compliance established by RIDA attainable? Is the federal government asking too much from state leaders by mandating RIDA? Perhaps there are alternative courses of action beyond what RIDA and the National Conference of State Legislatures (NCSL) are proposing. Providing an analysis of the implementation of this policy from the federal government's perspective and the NCSL's perspective is essential in determining the best course of action for implementing RIDA. The policy implications scholars and decision makers derive from an analysis of the RIDA are important for current and future U.S. Homeland Security policy decisions regarding identification security.

RIDA was signed into law on May 11, 2005 as part of the "Emergency Supplemental Appropriation for Defense, The Global War on Terror, and Tsunami Relief Act 2005, Division B, The Real Id Act". The act establishes minimum standards for the issuance of state drivers' licenses and identification cards that federal agencies would accept after May 11, 2008.<sup>6</sup> Some key features of the act are:

1. States would require individuals obtaining drivers' licenses or personal identification cards to present documentation to establish identity; U.S.

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<sup>6</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 1.

citizenship or lawful immigration status; date of birth; social security number (SSN) or ineligibility for SSN; and principal residence.

2. States would be required to verify the issuance, validity, and completeness of a document presented.
3. States would be required to have the following information appear on state-issued drivers' licenses and identification cards: full legal name, date of birth, gender, a unique drivers' license or identification card number, a full facial digital photograph, address of principal residence, issue and expiration dates, signature, physical security features and a common machine readable technology (MRT).
4. States would be required to provide electronic access to specific information contained in the motor vehicle database of the state to all other states.<sup>7</sup>

The passing of the law has sparked debate between the NCSL, the National Governors Association (NGA), and the Federal Government over how RIDA will be implemented. If any of the above standards existed prior to the RIDA Act, they were established by state laws. Any existing state laws with regards to presenting documentation, verification of that documentation, information displayed on licenses, and maintaining a database are now preempted by the federal standards established in the RIDA Act. In response to the law, the NCSL, together with the NGA and the American Association of Motor Vehicle Administrators (AAMVA) drafted a report titled "The Real Id Act: National Impact Analysis" in September 2006. The document identified several recommendations that would have to be incorporated into the final RIDA regulations in order for states to comply.<sup>8</sup> In March of 2007, the Department of Homeland Security issued a Notice of Proposed Rule Making (NPRM) "Minimum Standards for Drivers Licenses' and Identification Cards Acceptable by Federal Agencies for Official

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<sup>7</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 14 and 15.

<sup>8</sup> Testimony of Senator Leticia Van de Putte before the Subcommittee On Oversight of Government Management, The Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, United States Senate. 1.

Purposes”. Interested parties had sixty days from the date of publication to identify their concerns with the NPRM before the final regulations are published.

After reviewing the NPRM, the NCSL determined the proposed rule making did not address four key recommendations they offered in their NCSL Impact Analysis. The four key recommendations are: 1) Ensure that document verification systems are available nationally, 2) Allow states to adopt up to a ten year reenrollment process, 3) Exempt certain populations from the RIDA process, and 4) Provide the necessary federal funding to comply with the law.<sup>9</sup> As a result of their review of the proposed rulemaking, the NCSL is calling for a repeal of the act if the final regulations do not incorporate their recommendations identified in the NCSL Impact Analysis.

Some critics have called the new law a national ID, while others have called for a return to the negotiated rulemaking committee that was established in the Intelligence Reform Act of 2004. States such as Maine, California, Illinois, Alaska, and New York have already enacted legislation that affect RIDA, but several states such as New Hampshire and Washington have also introduced legislation or adopted resolutions declining to participate in RIDA citing implementation costs and privacy concerns. The cost to implement RIDA is estimated to be 23 billion dollars of which 300 million has been funded by the federal government.<sup>10</sup> States opposed to the act also point to the privacy protection and security issues that a large national database of RIDA information will create. Under the new law states are required to develop and submit a comprehensive security plan to DHS for all of their Department of Motor Vehicle (DMV) offices, drivers’ licenses and identification card storage and production facilities,

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<sup>9</sup> Testimony of Senator Leticia Van de Putte before the Subcommittee On Oversight of Government Management, The Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, United States Senate. 2.

<sup>10</sup> H.R. 1684, Department of Homeland Security Authorization Act for Fiscal Year 2008. 110<sup>th</sup> Congress First Session. 9 May 2007. [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h1684eh.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h1684eh.txt.pdf) (accessed 18 September 2007). The House approved the Department of Homeland Security Authorization Act for Fiscal Year 2008 (H.R. 1684), which would create a new grant program to assist states with the implementation of the RIDA. The grant program would authorize \$120 million in FY 2008, \$100 million in FY 2009, and \$80 million for FY 2010, to assist states with the implementation of the RIDA.

databases, and systems.<sup>11</sup> The current rules as written require states to collect personal information, be responsible for storing the information, and as stated earlier, are required to make this database accessible to all other states and federal agencies. Additionally, states' rights watchdogs have called the act illegal and unconstitutional based on the "positive grant" power given to the federal government described under the 10<sup>th</sup> Amendment which states that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.<sup>12</sup>

Unfortunately, after an extensive review of federal, state, and civil liberty watch group literature, no known documents that specifically analyze or debate the federal government's view on implementing RIDA compared to the National Governor Associations' view on implementing RIDA were found. This thesis will attempt to fill this gap in literature on RIDA.

#### **D. METHODOLOGY AND SOURCES**

A variety of sources will be used in this thesis. Primary sources such as the RIDA Act of 2005, the Notice for Proposed Rulemaking, *Minimum Standards for Drivers' Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, and congressional testimony will be used. Secondary sources include the NCSL's "The RIDA Act: National Impact Analysis", the Final Report of the National Commission on Terrorist Attacks Upon the United State, *The 911 Commission Report*, the Staff Report of the National Commission on Terrorist Attacks Upon the United States, *911 and Terrorist Travel*, Congressional Research Service Reports for Congress on the subject, and reports from the Congressional Budget Office. Other sources include reports provided by such groups as the Markle Foundation, the Heritage Foundation, the Cato Institute, and web sites with up to date information on the subject as well as conducting interviews with representatives of the Federal government and the NCSL.

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<sup>11</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*. [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 15.

<sup>12</sup> U.S. Constitution, 10<sup>th</sup> Amendment.

## **II. FEDERAL GOVERNMENT'S VIEW ON IMPLEMENTING RIDA**

This chapter offers the federal government's perspective on the need for standardized DL/ID card requirements starting with the objectives of RIDA and legislative background of the Act. The chapter then provides an analysis of the main requirements of RIDA and their intended purpose. Another important piece to this discussion is the section of the law that repeals the negotiated rulemaking committee that was established in the Intelligence Reform Act of 2004. Recent legislation that calls for a repeal of RIDA and a return to the negotiated rulemaking committee has been recently introduced.<sup>13</sup> The chapter also offers the federal governments' view on why RIDA does not create a national ID. The main objective of the RIDA is to strengthen the reliability of identification documents by providing document security in order to prevent terrorists from using fraudulent identification as a weapon against the United States. Additionally, the Act will improve law enforcement's ability to confirm the identity of the individual presenting the DL/ID card to prevent identity theft and fraud.<sup>14</sup> Effective 11 May 2008, the Act prohibits federal agencies from accepting state issued DL/ID cards for official purposes unless that state meets the minimum requirements of the Act.<sup>15</sup>

### **A. LEGISLATION AND AUTHORITATIVE GUIDANCE**

A series of legislative actions have resulted in the minimum document requirements and issuance standards as they are currently written in the NPRM, *Minimum Standards for Drivers' Licenses and Identification Cards Acceptable by Federal*

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<sup>13</sup> HR 1117, The REAL ID Repeal and Identification Security Enhancement Act of 2007. H.R. 1117 would repeal title II of the REAL ID Act of 2005 and reinstitute section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provides States additional regulatory flexibility and funding authorization to more rapidly produce tamper- and counterfeit-resistant driver's licenses and protects privacy and civil liberties by providing interested stakeholders on a negotiated rulemaking with guidance to achieve improved 21st century licenses to improve national security, [http://www.washingtonwatch.com/bills/show/110\\_HR\\_1117.html](http://www.washingtonwatch.com/bills/show/110_HR_1117.html) (accessed 17 September 2007).

<sup>14</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 73.

<sup>15</sup> Ibid, 9.



*Agencies for Official Purposes.* States must follow these requirements in order for their identification to be used for federal purposes. Prior to the 9/11 commission's recommendation for federal drivers' license issuance standards, legislation regarding Social Security number verification and machine readable technology incorporated into state issued drivers' licenses had been introduced and signed into law but later repealed by subsequent law. The first attempt to prescribe federal standards to drivers' licenses when used as identification for federal purposes was the Illegal Immigration Reform and Immigration Responsibility Act of 1996. The act required that a license issued by a state must include the Social Security number of the applicant either visibly printed or in a machine readable technology.<sup>16</sup> States that did not want to change the appearance of their drivers' licenses also had the option of requiring each applicant to provide their Social Security number so the issuing Department of Motor Vehicle (DMV) could verify it with the Social Security Administration.<sup>17</sup> This section of the act was later repealed by the Department of Transportation and Related Agencies Appropriations Act 2000.<sup>18</sup> Opponents of the requirement argued it was a step towards a national identification card.<sup>19</sup>

After the 9/11 commission's recommendation, which called for the creation of minimum standards for the federal acceptance of drivers' licenses, Title VII "Implementation of the 911 Commission's Recommendations," Subtitle B "Terrorist Travel and Effective Screening," Section 7212 (Driver's Licenses and Personal Identification Cards) of the Intelligence Reform and Terrorist Prevention Act of 2004 (P.L. 108-458) empowered the Secretary of Transportation in consultation with the

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<sup>16</sup> Public Law 104-208, Division C-Illegal Immigration Reform and Immigration Responsibility Act of 1996, 104<sup>th</sup> Congress, 30 September 1997, [http://www.treasury.gov/offices/enforcement/ofac/legal/statutes/pl104\\_208.pdf](http://www.treasury.gov/offices/enforcement/ofac/legal/statutes/pl104_208.pdf) (accessed 23 October 2007), 718.

<sup>17</sup> Ibid., 718.

<sup>18</sup> Public Law 106-69, Department of Transportation and Related Agencies Appropriations Act of 2000, 105<sup>th</sup> Congress, 20 December 2000, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_public\\_laws&docid=f:publ069.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ069.pdf) (accessed 23 October 2007), 43.

<sup>19</sup> Michael John Garcia, Margaret Mikyung Lee, and Todd Tatelman, "Immigration: Analysis of the Major Provisions of the RIDA Act of 2005," *CRS Report for Congress*, 25 May 2005, <http://fpc.state.gov/documents/organization/47141.pdf> (accessed 15 September 2007), 38.

Secretary of Homeland Security to issue the regulations.<sup>20</sup> The law also required the Secretary of Transportation to establish a negotiated rule making committee comprised of state officials responsible for issuing drivers' licenses, state elected officials, Department of Homeland Security personnel, and interested parties.<sup>21</sup> The negotiated rulemaking committee had the task of establishing minimum standards for: 1) documentation required as proof of identity, 2) the verifiability of the documents used, 3) the processing of applications to prevent fraud, 4) the information to be contained on each drivers' license, 5) common machine readable identity information including defined minimum data elements on each drivers' license, and 6) security to ensure drivers' licenses are resistant to tampering, alteration, counterfeiting, and capable of accommodating and ensuring the security of a digital photograph or other unique identifier.<sup>22</sup>

Two important features of Section 7212 were the requirements that the regulations implemented by the negotiated rulemaking committee "not infringe on the state's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that state" and "not require a state to comply with any regulation that conflicts with or otherwise interferes with the full enforcement of state criteria concerning the categories of individuals that were eligible to obtain a driver's license".<sup>23</sup> For example, if a state did not require that a drivers' license applicant be of a "lawful status" in the United States, the regulations could not infringe on their power to issue the license. Additionally, the 108<sup>th</sup> Congress did not include all of the document security proposals when the Intelligence Reform and Terrorist Prevention Act was enacted and agreed to revisit the proposals in the 109<sup>th</sup> Congress.<sup>24</sup>

During the 109<sup>th</sup> Congress, two new bills were introduced with regard to revisiting the document security proposals that were not included in the Intelligence

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<sup>20</sup> Public Law 108-458, The Intelligence Reform and Terrorism Prevention Act of 2004, 108<sup>th</sup> Congress Second Session, 17 December 2004, [http://www.nctc.gov/docs/pl108\\_458.pdf](http://www.nctc.gov/docs/pl108_458.pdf) (accessed 28 August 2007) 193.

<sup>21</sup> Ibid., 193.

<sup>22</sup> Ibid., 193.

<sup>23</sup> Ibid., 193.

<sup>24</sup> Michael John Garcia, Margaret Mikyung Lee, and Todd Tatelman, "Immigration: Analysis of the Major Provisions of the RIDA Act of 2005," *CRS Report for Congress*, 25 May 2005, <http://fpc.state.gov/documents/organization/47141.pdf> (accessed 15 September 2007) 1.

Reform and Terrorist Prevention Act. The RIDA Act was introduced by Representative James Sensenbrenner as H.R. 418, and the Drivers' License Security and Modernization Act, was introduced by Representative Tom Davis as H.R. 368. H.R. 368 only addressed state issued drivers' license and identification security standards, was referred to committee, and was never enacted.<sup>25</sup> H.R. 418, included the drivers' license and identification card standards as well as some immigration security measures based on the 911 Commission recommendations that were not included in the Intelligence Reform and Terrorist Prevention Act.<sup>26</sup> H.R. 418 was added to H.R. 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, introduced by Representative Jerry Lewis.<sup>27</sup>

This new version of H.R. 1268 which now included the document security provisions of the RIDA Act with additional requirements beyond what Section 7212 of the Intelligence Reform and Terrorist Prevention Act required, passed the House but was amended when it was passed in the Senate. The Senate passed version of H.R. 1268 did not contain the document security requirements of the RIDA Act in the House passed version of H.R. 1268 and subsequently led to a conference between the House and Senate to resolve the differences in the two bills.<sup>28</sup> Ultimately, the document security provisions of the RIDA Act from the House version of H.R. 1268 (that originated in H.R. 418) were included in the House Conference Report 109-72, Making Emergency Supplemental Appropriations For the Fiscal Year Ending September 30 2005, and For Other Purposes, Division B, The RIDA Act of 2005, Title II Improved Security for Drivers' License and Personal Identification Cards.<sup>29</sup> Both the House and the Senate approved the House Conference Report and the RIDA Act became law.

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<sup>25</sup> H.R. 368, Drivers' License Security and Modernization Act, 109<sup>th</sup> Congress First Session, 26 January 2005, 1.

<sup>26</sup> Ibid., 1.

<sup>27</sup> Ibid., 1.

<sup>28</sup> Ibid., 1.

<sup>29</sup> House Conference Report 109-72, Making Emergency Supplemental Appropriations For the Fiscal Year Ending September 30 2005, 109<sup>th</sup> Congress First Session, 3 May 2005, <http://www.access.gpo.gov/congress/legislation/06appro.html> (accessed 24 October 2007) 83.

## **B. RIDA REQUIREMENTS**

RIDA evolved into its current form from the legislation described in the previous section. The requirements of RIDA along with their intended purposes are examined in the following paragraphs.

### **1. Federal Requirements for Compliance**

The Act is divided into seven sections: 201 Definitions, 202 Minimum Document Requirements and Issuance Standards for Federal Recognition, 203 Trafficking in Authentication Features for Use in False Identification Documents, 204 Grants to States, 205 Authority, 206 Repeal, and 207 Limitation on Statutory Construction. Section 202 of the Act contains the majority of the language aimed at improving the reliability of identification documents and is the largest section of the law.

### **2. Definitions**

A key feature of this section of the law is the definition of “official purpose”. The RIDA Act defines “official purpose” as including but not limited to accessing federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary of Homeland Security determines.<sup>30</sup> This broad definition was later clarified when the NPRM was issued in March 2007. The NPRM narrowed the scope of “official purpose” to only the three areas expressly stated in the Act, accessing federal facilities, boarding federally regulated commercial aircraft, and entering nuclear facilities.<sup>31</sup> The NPRM also considered including the acquisition of federally issued documents such as military Common Access Cards (CAC), Transportation Worker Identification Cards (TWIC) and passports within the scope of “official purpose” but decided that since states were still under the phase-in period of the Act, requiring a RIDA to obtain federally issued forms of identification would severely limit the ability of federal workers to obtain federally issued identification. However, DHS pointed out in the NPRM that requiring RIDA to obtain federally issued forms of

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<sup>30</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 201.

<sup>31</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 17.

identification would be within the scope of improving document security and one would expect that after the phase-in period is over the definition of “official purpose” will be expanded to include issuing federal forms of identification. The law expressly grants the Secretary of Homeland Security discretionary authority to expand the definition of “official purpose”.

DHS also clarified the intentions of the “official purpose” definition with regards to entering federal facilities. The first point of clarification explains that federal facilities that do not currently require photo identification for entry are not required to change their entry processes because of RIDA. Additionally, federal facilities that accept other forms of identification for entry can still continue to do so, however if a state issued drivers’ license or identification card is used then it must be RIDA compliant after May 11 2008 unless a compliance deadline extension application was submitted and approved by DHS.

### **3. Minimum Document Requirements and Issuance Standards for Federal Recognition**

Section 202 of the RIDA Act contains the detailed requirements that states must meet if their drivers’ licenses and identification cards will be used for federal acceptance that fall into the scope of “official purpose”. This section of the law establishes the minimum standards for Federal use, the minimum documents standards, the minimum issuing standards, and other requirements mandated by the Act. The section contains the language that was in the original House version of the RIDA Act in H.R. 418. As discussed earlier, H.R. 418 was added to H.R. 1268 and was approved by the House. However, the Senate approved an amended version of H.R. 1268 that did not include the following requirements. After the House Conference Report was approved by both the House and the Senate, the language from H.R. 418 became law.

#### ***a. Minimum Standards for Federal Use***

This section of the law establishes that it is binding on Federal agencies within three years of enactment (May 11 2008) and that the Secretary of Homeland Security has the overall authority to establish whether a state is meeting the minimum requirements of the Act through a certification process. According to the law as written in this section, beginning three years after the enactment of RIDA, a Federal agency is prohibited from accepting a state issued drivers’ license or identification card from any

person unless the issuing state meets the requirements of the Act.<sup>32</sup> The language in this section establishes that the law is binding on Federal agencies and as such, does not directly impose Federal standards on the states. The House Conference Report pointed out that because the law is indirectly applied, states are not required to participate in RIDA.<sup>33</sup> However, any state that would like their drivers' licenses or identification cards to be accepted by Federal agencies for official purpose, as defined by the Act, must modify existing state laws and regulations in order to comply with the minimum standards of RIDA.<sup>34</sup> The NPRM also provided further clarification on the compliance timeline for the states. Federal agencies are prohibited from accepting state issued drivers' licenses or identification cards after May 11 2008 (three years from the time of enactment) unless two conditions are met.

Under the first condition, a Federal agency can accept a drivers' license or identification card for official purpose after May 11 2008 if the issuing state is certified as meeting all the requirements of the Act by the Secretary of Homeland Security.<sup>35</sup> Under the second condition, Federal agencies can accept state issued drivers' licenses and identification cards if the issuing state has submitted an approved compliance deadline extension application with adequate justification.<sup>36</sup> Currently, DHS is approving extension applications to December 31 2009 because as of this writing, the final RIDA ruling has not been issued and states will need time to review the final rule before implementing their plans.<sup>37</sup> The compliance deadline does not mean that all state issued licenses must be replaced by May 11 2008. The May 11 2008 compliance deadline only

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<sup>32</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 202A.

<sup>33</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, 202A.

<sup>34</sup> Ibid., 202A.

<sup>35</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 20.

<sup>36</sup> Ibid., 20.

<sup>37</sup> Ibid., 22.

applies to the conditions listed above and in order for states to be compliant one of the two conditions must be met. DHS recommends a five year phase in period for license replacement and suggested in the NPRM that states have all issued licenses replaced with RIDA compliant licenses by May 11 2013.<sup>38</sup> An additional level of Federal regulation was introduced by granting the Secretary of Homeland Security authority over the state certification policy. The Secretary of Homeland Security works in consultation with the Secretary of Transportation to determine whether a state is compliant. The Secretary of Transportation is responsible for certifying a state while the Secretary of Homeland Security retains overall authority by verifying a state is following the requirements of their certification.

***b. Minimum Document Requirements***

The RIDA Act mandates that states as a minimum include the following information and features on each drivers' license and identification card issued: 1) full legal name, 2) date of birth, 3) gender, 4) drivers' license or identification card number, 5) digital photograph, 6) address of principal residence, 7) physical security features to ensure drivers' licenses are resistant to tampering, alteration, counterfeiting or duplication of the document for fraudulent purposes, and 8) a common Machine Readable Technology (MRT) with defined minimum data elements.<sup>39</sup> A number of states already incorporate some or all of these features on their DL/IDs, however all states must now comply with these minimum standards for federal acceptance. These features were incorporated into the law with the intent of improving the ability of law enforcement officials at all levels to confirm the identity of individuals presenting state issued drivers' licenses or identification cards.<sup>40</sup> The following is a review of the key features and intent of the minimum document security requirements of the RIDA Act.

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<sup>38</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 21.

<sup>39</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 202(b).

<sup>40</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109<sup>th</sup> Congress 1st Session, 30 September 2005, section 202(b) 179.

Currently there is no requirement for states to use the full legal name of the applicant on the drivers' license or identification card. This causes a problem when law enforcement officials check the name on the drivers' license against a public record database because "no matches" will be found if the data base used a full legal name and the state issued ID allows a variation of the full legal name. Several of the 9/11 terrorists were issued state drivers' licenses and identification cards with a variant of their full legal name that was presented on their passports used to obtain the state ID.<sup>41</sup> The NPRM provides additional detail for this requirement. States are also required to print the exact full legal name on their ID as it appears on the acceptable source document used by the applicant to apply for the ID.<sup>42</sup> Additionally, in the event of a legal name change as a result of marriage, divorce, adoption, or court order, states are required to only accept an original or notarized copy of the acceptable source document for the name change and it must include the applicants age or date of birth.<sup>43</sup> States must also ensure that all previous names of each applicant are not deleted and must maintain them in the DMV database.<sup>44</sup>

The drivers' license or identification card number is currently used by every state already, but the law now requires traceable numbers to be used on temporary drivers' licenses and identification cards.<sup>45</sup> When the law was passed more than twenty states still used a regular photograph laminated onto their licenses which are vulnerable to alteration. The requirement to use a digital photograph will allow law enforcement to compare the photo on a drivers' license to the states database via secure computer technology. This feature also enables states to store digital photos of all applicants at a

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<sup>41</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, section 202(b) 178..

<sup>42</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 66.

<sup>43</sup> Ibid., 66.

<sup>44</sup> Ibid., 66.

<sup>45</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, section 202(b) 179.



relatively low cost in their database. The Department of Homeland Security also recommends that DMVs store the digital photographs of applicants who do not receive a DL/ID for a period of one year and replace the image with a new when the applicant reapplies. Additionally, if an application for a DL/ID is denied on the basis of fraud, the image should be retained in the database for a period of ten years with the reason for denial noted.<sup>46</sup>

States are required to display an applicants' address of principal residence however DHS does propose to enforce this requirement with two exceptions. Applicants who meet the state or federal requirements for a "confidential address" and applicants who have "no fixed address" are not required to comply with this section of the RIDA Act.<sup>47</sup> Applicants whose safety may be jeopardized by displaying their principal address on their DL/IDs cards such as, law enforcement officials, judges, protected witnesses, and victims of domestic violence will be able to keep their address confidential and applicants such as homeless people with no fixed address are not required to display their principal address as long as the issuing state has a written exceptions process for each circumstance.<sup>48</sup> The requirement for each state to ensure their DL/IDs incorporate physical security features was included because the national defense forensic laboratory confirmed that some states still issue DL/IDs cards that can easily be fraudulently duplicated by criminals and terrorists using widely available technology.<sup>49</sup> DHS proposed that states adopt two methods of security features to comply with this section of the law, offset lithography designed to prevent amateurs from manufacturing fraudulent

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<sup>46</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 67.

<sup>47</sup> Ibid., 68, 69.

<sup>48</sup> Ibid., 68

<sup>49</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, section 202(b) 179.

DL/IDs cards or altering existing ones, and adversarial testing which allows states to experiment with different card stocks and new technologies to meet the security requirements of the act.<sup>50</sup>

DHS proposes the use of a 2D bar code for the MRT requirement of the Act. The 2D bar code was acknowledged by DHS as the most suitable technology to meet this requirement for several reasons. First, the 2D bar code is the existing standard for the American Association of Motor Vehicle Administrators (AAMVA) and the American public is already familiar with it, second, 45 of the 51 states already incorporate this technology in their DL/ID card security features, and because of its widespread use among the majority of states, the interoperability of the technology between states is possible<sup>51</sup>. DHS is proposing to mandate the 2D bar code as the RIDA MRT and proposes states comment on what minimum data elements of their DL/ID cards that will be stored in the Machine Readable Zone (MRZ).<sup>52</sup> DHS also recommends that personal data stored in the MRZ be encrypted to minimize third party access to the information however, encryption of the MRZ data is not mandated by the Act due to cost and practicality concerns.<sup>53</sup>

***c. Minimum Issuance Standards***

Before issuing a DL/ID card to an applicant, the Act mandates that states verify an applicant's identity by requiring him or her to show: 1) a photo identity document or a non photo document displaying the applicant's full legal name and date of birth, 2) document displaying date of birth, 3) proof of the applicant's social security account number or verification that the applicant is not eligible for a social security account number, and 4) a document showing the applicant's name and address of

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<sup>50</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 72.

<sup>51</sup> Ibid., 76.

<sup>52</sup> Ibid., 76.

<sup>53</sup> Ibid., 78,

principal residence.<sup>54</sup> The proposed regulation covering this section of the Act creates a federal list of minimum source documents acceptable to prove identity. DHS states these requirements are necessary because of the many different types of acceptable identification documents currently allowed in each state. In order to simplify this process and increase identification security DHS has proposed the following list of acceptable documents that a state DMV office can accept from applicants to prove their identity and at the same time fulfill the requirement to provide a document showing an applicants date of birth: 1) a valid, unexpired U.S. passport, 2) a certified copy of a birth certificate issued by a U.S. state or local office of Public Health, Vital Record, Vital Statistics, or equivalent, 3) a consular report of birth abroad, forms FS 240, DS 1350, and FS 545, 4) an unexpired permanent resident card, form I-551 5) an unexpired employment authorization document (EAD), Form I-766 and Form I688B 6) an unexpired foreign passport with a valid U.S. visa affixed, 7) a U.S. certificate of citizenship, Form N-560 or Form N-561, 8) a U.S. certificate of naturalization, Form N-550, and Form N-570, and 9) a Real DL/ID card issued subsequent to the standards established by the law.<sup>55</sup>

According to DHS, this federal list of acceptable identification documents has three advantages. First, by limiting the list to a low number of acceptable documents, DHS has only selected the documents they believe are the most secure. Second, limiting the number of acceptable documents to establish identity is less burdensome to DMV employees who have to verify the authenticity of the documents. Employees will be better skilled at detecting fraudulent documents from the real documents because they are dealing with a limited list. Finally, keeping the list limited to the low number of acceptable documents will ease the coordination process of verifying them with the issuing agencies. Under the minimum issuance standards of the Act states are also required to ensure that applicants provide proof of their social security account number.

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<sup>54</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 202 C (a) 1.

<sup>55</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 35.

Additionally, in the event that the applicant is in the U.S. as an alien without authorization to work, states are also required to verify that the applicant is not eligible for a social security account number.

There are additional special requirements under the minimum issuance standard section of the Act. A new special requirement for issuing DL/IDs is the requirement for applicants to provide proof of their lawful status in the U.S., and for state DMV offices to verify the authenticity of the documents presented. According to the Act an applicant is considered to have lawful status in the U.S. if they meet one or more of the following nine conditions: 1) is a citizen or national of the U.S., 2) is an alien lawfully admitted for permanent or temporary residence in the U.S., 3) has conditional permanent resident status in the U.S., 4) has an approved application for asylum in the U.S. or has entered into the U.S. in a refugee status, 5) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the U.S., 6) has a pending application for asylum in the U.S., 7) has a pending or approved application for protective status in the U.S., 8) has approved deferred action status, and 9) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the U.S. or conditional permanent residence status in the U.S.<sup>56</sup>

DHS has proposed the following source documents as acceptable to show proof of an applicant's legal residence, a U.S. passport, a certified copy of a birth certificate, a Department of State consular report of birth abroad, a certificate of citizenship, a certificate of naturalization, and a permanent resident card.<sup>57</sup> These documents are directly tied to an applicants' legal status in the U.S. and once their validity is verified they are acceptable. However, the EAD card or a foreign passport with a valid U.S. visa and/or a DHS nonimmigrant form I-94 attached for identification can only be used as a provisional means of verifying lawful status pending the

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<sup>56</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 202 c (2) B.

<sup>57</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 45.

documents' status in the Systematic Alien Verification for Entitlements (SAVE) system.<sup>58</sup> The conditions verified in SAVE may not automatically grant legal status. Additionally, any applicant who proves their legal residence in the U.S. by meeting one of the conditions of five through nine in the above list is only authorized a temporary DL/ID that will expire on the date their legal stay in the U.S. expires and it can only be renewed in person with valid documentary evidence that their legal presence in the U.S. has been extended by the Secretary of Homeland Security.<sup>59</sup>

The verification piece of the special requirements for issuance mandates that in addition to states performing a physical inspection of the source documents presented by the applicant on the Federal list, they must also verify that the document presented has been legitimately issued by the issuing agency prior to granting a DL/ID card. States are required to verify with the issuing agency, the issuance, validity, and completeness of the documents presented by an applicant to show proof of identity, date of birth, social security eligibility, applicant's name and principal residence, and the applicant's lawful status in the U.S.<sup>60</sup> The proposed rules for the Act allow this requirement to be phased in over time and mandates that states are only required to verify documents from the Federal list of acceptable source documents with the issuing agency.<sup>61</sup> The proposed rule gives state great flexibility in applying their own laws and requirements for applicants to present other source documents in addition to the Federally required documents. DHS recommends that states require applicants provide at least one additional document and cross reference it with the one source document that has to be

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<sup>58</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 45..

<sup>59</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 202 c (2) C.

<sup>60</sup> Ibid., 202 c (3) (A).

<sup>61</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 47.

verified according to the regulation.<sup>62</sup> DHS is seeking active participation from the states to implement this electronic verification portion of the rule in order for states to maintain control of the business processes used. In the DHS Privacy Impact Statement the following was discussed:

The key will be to ensure that the states administer and manage the systems built to implement the Act. In addition, with appropriate and necessary participation from the affected federal agencies, including DHS, the Department of Transportation, and the Social Security Administration, the states must be empowered to develop the business rules surrounding the check of federal reference databases and the state-to-state data exchange processes. State, rather than federal operation and control of the systems not only minimizes the appearance of a national database, but also fosters the system of federalism upon which our country is based. The language in the preamble of the NPRM supports the important role of the states.<sup>63</sup>

DHS anticipates that identity documents such as a certified copy of birth certificate issued by a U.S. state or local office of public health, vital records, vital statistics or equivalent can be electronically verified through the Electronic Verification of Vital Records (EVVE) system.<sup>64</sup> DHS anticipates that identity documents such as a U.S. passport or consular report of birth abroad issued to U.S. citizens through the Department of State can also be electronically verified through an automated system yet to be developed. Although EVVE and an automated system for U.S. passports are not functional as of this writing, EVVE will verify that the information presented on the face of a birth certificate matches the vital statistic birth records through a query process. The National Association of Public Health Statistics and Information Systems (NAPHSIS) is currently working to have the system operational by May 2008. In the event that the system is not operational by May 2008, DHS proposes states establish a written

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<sup>62</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 48.

<sup>63</sup> U.S. Department of Homeland Security, *Privacy Impact Statement for the Real ID Act*, 1 March 2007, [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realid.pdf) (accessed 12 September 2007), 7 and 8.

<sup>64</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 51.

procedure to verify a birth certificate. At a minimum the applicants file or record should be annotated that their birth certificate was not electronically verified with the issuing agency and the electronic verification will be necessary when the DL/ID is renewed or reissued and EVVE is available.<sup>65</sup> Confirmation of a birth certificate through EVVE, or a U.S. passport and consular report of birth abroad issued to a U.S. citizen would verify both the identity and lawful status of the applicant.

The Act mandates that states utilize the Systemic Alienation Verification for Entitlements (SAVE) system to verify the legal presence of an applicant in the U.S. other than a citizen, applying for a RIDA.<sup>66</sup> A valid U.S. visa affixed in an unexpired foreign passport is an acceptable document to establish identity but not lawful status in the U.S. Under the DHS's U.S. VISIT and the Department of State's Bio Visa Program anyone applying for a U.S. visa abroad is required to submit fingerprint scans which are biometrically verified by U.S. Customs and Border Protection Officers at ports of entry when the person seeking admission arrives.<sup>67</sup> States are not required to verify such documents with the issuing agency, in this case the Department of State, because of the security already involved with obtaining a U.S. visa affixed to an unexpired foreign issued passport. This document alone is not enough to grant the holder lawful status in the U.S. Applicants who present such documents for the purpose of obtaining a RIDA are required to submit additional documents such as a passport stamp, an I-797 notice of action, or some other documentation issued by U.S. Citizenship and Immigration Services (USCIS)<sup>68</sup> to establish lawful status in the U.S. States are then required to

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<sup>65</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 51.

<sup>66</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 202(c)(3)(C).

<sup>67</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 54.

<sup>68</sup> Ibid., 55.



verify this additional documentation with the SAVE system.<sup>69</sup> Additionally, applicants who submit permanent resident cards and employment authorization documents will also require verification through SAVE to establish lawful status.

The DHS proposes that states verify the social security account numbers of applicants using the Social Security Online Verification (SSOLV)<sup>70</sup> According to DHS, 46 states already use SSOLV to verify social security numbers so the requirement in the Act will not be burdensome. Additionally, DHS points out the significance of fraudulent social security numbers due to the fact that several of the 911 hijackers were able to attain state issued DL/ID cards because they used social security numbers that were never issued, issued in the name of a child, or associated with several names.<sup>71</sup> These fraudulent numbers enabled the hijackers to obtain DL/IDs from Virginia, Florida, California, Arizona, and Maryland.<sup>72</sup> Under the RIDA Act, applicants must present one of the following documents to show proof of their social security account number; 1) his or her social security card, 2) a W-2 form, 3) a SSA 1099 form, 4) non-SSA 1099 form, 5) or a work pay stub that displays the applicants full legal name and his or her social security account number.<sup>73</sup>

**d. Other Requirements**

Along with the minimum document requirements and the minimum issuance standards already discussed, the RIDA Act also mandates that states adopt the following practices in the issuance of DL/ID cards: 1) employ a technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format, 2) retain paper copies of source documents for a minimum of seven years or images of source documents presented for a minimum of

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<sup>69</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 55.

<sup>70</sup> Ibid., 42.

<sup>71</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 42.

<sup>72</sup> Ibid. 42

<sup>73</sup> Ibid. 43.



ten years, 3) subject each DL/ID card applicant to mandatory facial image capture, 4) establish an effective procedure to confirm or verify a renewing applicant's information, 5) confirm with the Social Security Administration a social security account number presented by a person using the full social security account number and in the event that a social security account number is already registered to or associated with another person to which any state has issued a DL/ID card, the state shall resolve the discrepancy and take appropriate action, 6) refuse to issue a DL/ID card to a person holding a DL/ID card issued by another state without confirmation that the person is terminating or has terminated the DL/ID, 7) ensure the physical security of locations where DL/ID cards are produced and the security of document materials and papers from which DL/ID cards are produced, 8) subject all persons authorized to manufacture or produce DL/ID cards to appropriate security clearance requirements, 9) establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of DL/ID cards, 10) limit the period of validity of all DL/ID cards that are not temporary to a period that does not exceed eight years, 11) in any case in which the state issues a DL/ID card that does not satisfy the requirements of this section, ensure that such DL/ID card clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose, and that it uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for official purpose, 12) provide electronic access to all other states to information contained in the motor vehicle database of the state, 13) maintain a state motor vehicle database that contains at a minimum, all data fields printed on the DL/ID cards issued by the state and the motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on DLs..<sup>74</sup>

By requiring states to adhere to the practice of electronically capturing images of source documents and storing them in a data base as well as keeping paper copies of source documents in a filing system for a set period of time DHS is aiming to serve several purposes. First, the practice will ease the DL/ID renewal process because

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<sup>74</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 202(b).

applicants will not need to reproduce their source documents since they will already be on file, both electronically and in paper copy.<sup>75</sup> Second, the minimum time period for storage establishes a window during which documentation is available for law enforcement officials investigating and prosecuting suspected identity concealment by criminals and terrorists.<sup>76</sup> Both the electronic data base and the paper copy filing system will also provide proof and assistance for law enforcement officials that are investigating identity theft crimes.<sup>77</sup> Current practice is for state DMV offices to dispose of source documents after just a few months thereby destroying any potential identity theft audit trail for law enforcement.<sup>78</sup> The facial imaging requirement is designed to be a deterrent to attempted fraud. The general public as well as identity theft criminals and terrorists, will now know their image will be available to law enforcement officials even if they are denied a DL/ID card.<sup>79</sup>

Current processes for DL/ID card renewal are inadequate and lead to identity theft as well as create vulnerabilities that terrorists might exploit.<sup>80</sup> DHS aims to limit these vulnerabilities by mandating that states develop an effective procedure to confirm or verify an applicant's information during the renewal process. The proposed regulations will allow for remote renewal so long as none of the information retained in the database, both electronically or paper copy have changed, for example the applicants' legal name or address of principal residence.<sup>81</sup> Applicants must provide updated source documents if the information has changed. Additionally, DMVs are required to re-verify the information in the database at the time of renewal to ensure none of the information

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<sup>75</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, section 202(b), 179.

<sup>76</sup> Ibid., 182.

<sup>77</sup> Ibid., 182.

<sup>78</sup> Ibid., 182.

<sup>79</sup> Ibid., 182

<sup>80</sup> Ibid., 183.

<sup>81</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 80.

matches death records or fraudulent social security numbers.<sup>82</sup> In addition to verifying an applicants' social security account number with SSOLV, states are also required to use the applicants' full social security number when verifying and resolve any issues with duplicate DL/ID cards issued with the same social security number. Both the states of Virginia and New York found "no matches" for over hundreds of thousands of DL/ID card holders in their respective states when reconciling DL/ID cards they issued with the Social Security Administration as a result of state law changes they implemented regarding social security number verification after the 911 attack.<sup>83</sup> In a similar action, states are no longer allowed to issue a DL/ID card to anyone who already has DL/ID card from another state without ensuring that person is terminating or will terminate the card. This will stop the practice of criminals and bad drivers from collecting multiple DL/ID cards in their efforts to hide their crimes.

To meet the requirements of the physical security and appropriate security clearance mandates in the other requirement section of the Act, DHS proposes that states submit a comprehensive security plan in conjunction with their request for certification that describes their efforts to secure DMV facilities and the DL/ID card production process. The physical security of the DL/ID card production process should include a written assessment of each facility, physical security measures, access identification and control measures for employees and vendors, written policies and procedures, training and internal controls to identify and minimize fraud, and an emergency/incident response plan if procedures are breached.<sup>84</sup> States have also been advised by DHS that their security plans should also describe the process of conducting security clearance investigations for employees. In order to facilitate states' efforts to meet these

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<sup>82</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 80.

<sup>83</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, 183.

<sup>84</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 87.

requirements, DHS has clarified the intent of security clearances. According to DHS, the intent of the security clearance is to conduct a background check on employees because an actual security clearance to handle classified documents is not required in state DMVs. DHS has identified three key processes within DMVs where employees should be subject to background checks. Employees whose duty gives them the ability to affect the identity information that appears on the DL/ID cards, employees who have access to the DL/ID card production process, and employees who are involved with the manufacture of DL/ID cards should be classified as “covered positions” and as such should be subject to background checks.<sup>85</sup> Employees currently working in covered positions or anyone seeking employment in a covered position will be subject to a background check and required to submit fingerprints in order to conduct a criminal history record check. DHS also proposes that states conduct a financial history check to identify anyone who might be vulnerable to bribery and a SAVE verification of their lawful status in the U.S.<sup>86</sup> The current list of disqualifying offenses used for the TSA’s Hazardous Materials Endorsement program and the Transportation Workers Identification Credential program will be adopted for employees working in covered positions.<sup>87</sup>

Under the new ruling states must identify any DL/ID card issued that does not meet the requirements of the Act. DHS proposes these DL/ID are clearly identified by placing large bold letters on the face of the card that indicate the DL/ID may not be accepted by any Federal agency for Federal identification or for any other official purpose. These non compliant DL/ID cards must also incorporate a unique design or color to inform Federal agencies and law enforcement personnel of their non compliance. DHS has asked for comments on whether or not a uniform design and color should be implemented nation wide for these non compliant DL/ID cards. The requirement to implement a state to state data exchange of the DMV database will aid DL/ID card issuing agencies by allowing them to ensure the applicant is not holding multiple DL/ID

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<sup>85</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver’s licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007), 84.

<sup>86</sup> Ibid., 85.

<sup>87</sup> Ibid., 85.

cards to avoid the accumulation of points for bad driving, and to determine if the applicant is unqualified or presenting a fraudulent application.<sup>88</sup> DHS points out that the state to state data exchange is governed by multiple statutes and regulations among the states and that multiple database systems already exist. A coordinated plan between DHS, DOT, AAMVA, and the states will be implemented to facilitate this process.

#### **4. Trafficking in Authentication Features for Use in False Identification Documents**

This section of the act establishes a federal criminal penalty for those who knowingly traffic in actual authentication features for use in fraudulent identification cards by amending 18 U.S.C. 1028 (a) by changing the phrase “false identification features” with “false or actual authentication features”.<sup>89</sup> The second part of this section requires the Secretary of Homeland Security to enter information into aviation security screening databases about any person convicted of using a false DL/ID card at an airport.<sup>90</sup> These requirements were included in the text of the law in an effort to reduce the incidents where airline travelers are delayed as a result of people with similar names showing up on the “do not fly” watch list.<sup>91</sup>

#### **5. Grants to States**

Considering that some states already meet most of the requirements of RIDA, DHS must ensure any grants to implement the law are directed towards states that will not be able to comply with the law by the end of 2009.<sup>92</sup>

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<sup>88</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007) 61.

<sup>89</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, 184.

<sup>90</sup> Public Law 109-13, Division B-The Real Id Act of 2005, 109<sup>th</sup> Congress, 11 May 2005, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ013.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ013.109.pdf) (accessed 2 September 2007), section 203 (b) (1).

<sup>91</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, 185.

<sup>92</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, 185.

## **6. Authority**

The Secretary of Homeland Security has the authority to issue regulations, set standards, and issue grants in consultation with the Secretary of Transportation and the states. Additionally, DHS must use a regulatory notification procedure to issue the regulations and cannot use any other form of rule making such as a negotiated rule making committee that was originally allowed in section 7212 of the Intelligence Reform Act.<sup>93</sup>

## **7. Repeal**

To avoid any conflicting guidance, section 7212 of the Intelligence Reform Act is repealed by RIDA.

## **8. Limitation on Statutory Construction**

This section of the law establishes that RIDA shall not affect the authority and responsibilities of the Secretary of Transportation and states under chapter 303 of title 49, United States Code.

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<sup>93</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, 185.

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### **III. NATIONAL CONFERENCE OF STATE LEGISLATURES VIEW ON IMPLEMENTING RIDA**

This chapter offers the National Conference of State Legislators' (NCSL) view on Implementing RIDA. The NCSL is a bi-partisan organization that represents the 50 state legislatures and the legislatures of U.S. commonwealths, territories, possessions, and the District of Columbia. After RIDA was signed into law in 2005, the AAMVA in conjunction with the NGA and NCSL conducted a nation wide impact analysis of RIDA on state DMVs. The analysis was conducted by sending surveys that asked detailed questions about every section of the Act to all 51 jurisdictions (the 50 states and the District of Columbia). The surveys were comprised of one hundred and fourteen multi-part questions that required six to eight weeks to complete. Feedback from the surveys led the NCSL to identify two key findings and nine recommendations that in their view would need to be addressed in order for states to comply with the RIDA mandate. The first key finding by the NCSL is the estimated cost to implement RIDA. According to the NCSL RIDA will cost states an estimated \$11 billion over the next five years to implement.<sup>94</sup> This dollar figure results from the estimated costs associated with the mandated re-enrollment process, verification requirements, DL/ID design requirements, and additional support costs.

The re-enrollment requirement will force DMVs to hire additional employees to process the influx of new applicants and current DL/ID holders who now must make an in person visit to the DMV in order to provide the identification documents required by the Act. There are over 245 million people who currently hold a state issued DL/ID card that must be re-enrolled within five years of the May 2008 compliance deadline. The new verification process will also drive the cost of RIDA because states will now have to develop new programming, testing, and training in order for their DMV employees and computer systems to independently verify each source document with the five proposed Federal electronic systems of which only one is nationally operational.<sup>95</sup> In addition to

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<sup>94</sup> The Real ID Act: National Impact Analysis, September 2006, <http://www.nga.org/Files/pdf/0609REALID.pdf> (accessed 15 September 2007) 3

<sup>95</sup> Ibid., 3.



the independent verification of each source document through the Federal electronic database, states must also develop a state to state electronic system of sharing DMV records. The DL/ID design requirements of the Act also increase costs. Security features in DL/ID cards vary greatly from state to state and if RIDA mandates a uniform requirement across the board, states will lose their flexibility to use the security configurations they already employ even if they are successful. According to the NCSL this could force DMVs to move away from over the counter DL/ID issuance procedures and move towards a central issuance system.<sup>96</sup> Additional costs will be incurred by other requirements of the Act such as conducting security clearances of DMV personnel and providing employees fraudulent document recognition training.<sup>97</sup>

The second key finding by the NCSL is that RIDA will severely impact the efficiencies of issuing DL/ID cards which in turn will significantly increase wait times for applicants. State DMVs fear that the new requirements of RIDA may actually double the amount of time it currently takes to receive a DL/ID card. Time saving practices such as email, mail in renewal, and over the counter issuance could effectively be ruled out during the re-enrollment phase of RIDA depending on what is published in the final regulations. To minimize the negative effects of the key RIDA impacts identified by the NCSL a series of recommendations were offered to the Federal government so they could be incorporated into the proposed rule making document. The recommendations were given to DHS in February 2006, a year after the RIDA was signed into law and a year before DHS published their NPRM for RIDA. The NCSL recommended DHS extend the compliance deadline of May 2008, provide all necessary funding, grant the Secretary of DHS flexibility to recognize state innovation where applicable, extend the re-enrollment schedule to 10 years, allow reciprocity for persons already vetted by the Federal government, provide the Federal electronic systems, require states to only use the Federal electronic systems as they are available, apply universal naming conventions to facilitate

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<sup>96</sup> The Real ID Act: National Impact Analysis, September 2006, <http://www.nga.org/Files/pdf/0609REALID.pdf> (accessed 15 September 2007) 3.

<sup>97</sup> Ibid., 3.

electronic verification, and establish DL/ID card security requirement based on performance instead of technology.<sup>98</sup>

On March 26 2007, after DHS published the RIDA NPRM, Senator Leticia Van De Putte, a member of the Texas State Senate and President of the NCSL, testified before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, United States Senate, regarding RIDA. During her testimony Senator Van De Putte commended DHS for incorporating a number of the NCSLs' recommendations from the Impact Analysis, however she also identified four key areas of concern and the NCSLs' recommended solutions that needed to be addressed when the final regulations are published. These four concerns are: 1) availability of the verification systems, 2) a longer re-enrollment process, 3) certain population exemptions from RIDA, and 4) provide the necessary federal funding to implement RIDA. The following sections will examine each of the NCLS four main concerns and recommendations.

#### **A. VERIFICATION SYSTEMS**

In order for State DMVs to meet the electronic verification requirements of RIDA they will need connectivity to five existing federal databases and create a new data base for the state to state information sharing requirement similar to the Commercial Driver License Information System (CDLIS) already in use. This connectivity challenge will require over 2.1 million computer programming hours to meet the eligibility verification, business process re-engineering, photo capture, and database design.<sup>99</sup> States have advocated for the federal government to allow a transition period for the electronic verification requirements of the RIDA until all databases are nationally available.<sup>100</sup> The

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<sup>98</sup> The Real ID Act: National Impact Analysis, September 2006, <http://www.nga.org/Files/pdf/0609REALID.pdf> (accessed 15 September 2007), 5.

<sup>99</sup> Ibid, 9.

<sup>100</sup> David Quam, Director, Federal Relations, National Governors Association, *Understanding the Realities of Real ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards*, 26 March 2007, Statement Before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental affairs, <http://www.nga.org/Files/pdf/0703STATEMENTREALIDQUAM.PDF> (accessed 13 September 2007), 2.

following chart offers a picture of how both the state to federal issuing agency and state to state electronic verification systems would work together under RIDA guidance:

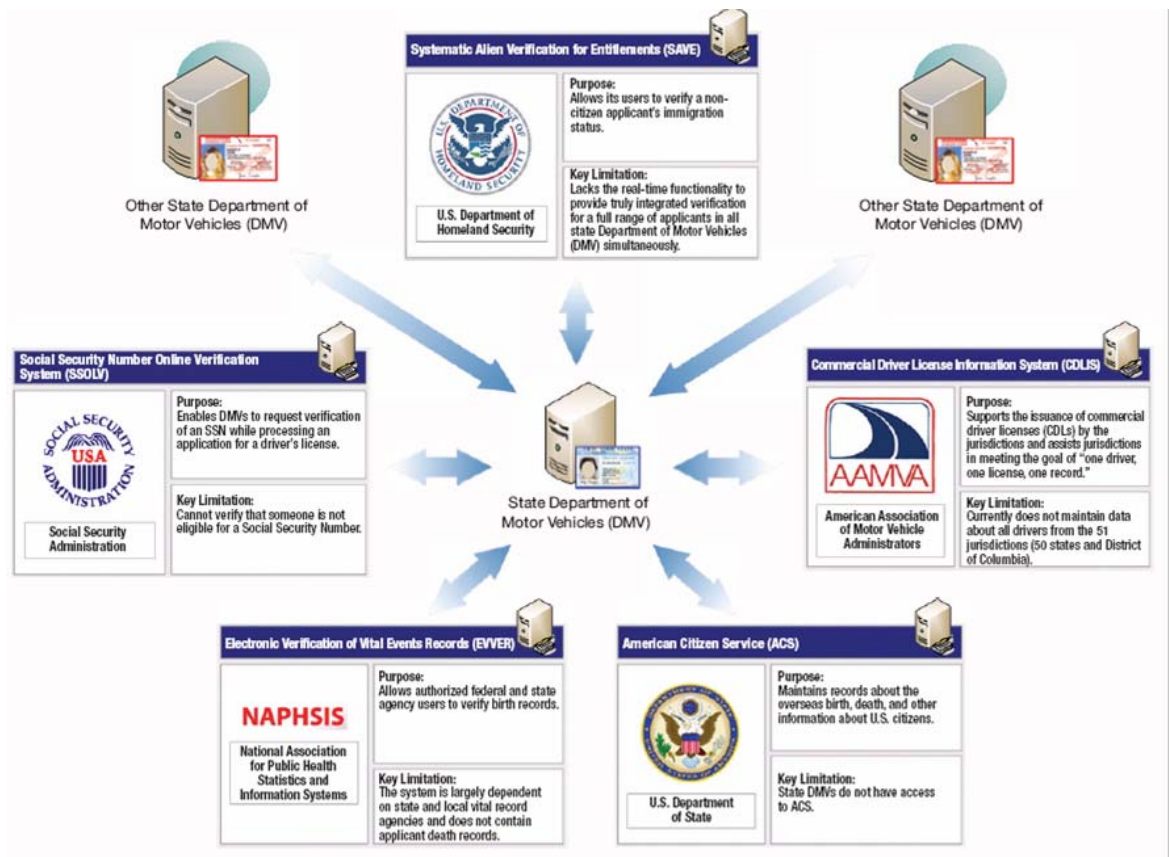


Figure 1. RIDA Verification Systems (From: Real ID The Art of Possible, 6).

### 1. Electronic Verification and Vital Events Records (EVVER)

The EVVER system is managed by the National Association for Public Health Statistics and Information Systems (NAPHSIS) and it allows authorized Federal and State agency users to verify birth records. The system is dependent on State and local vital record agencies and does not contain applicant death records.<sup>101</sup> The NCSL has identified that this system will not be available by the May 2008 compliance deadline.

<sup>101</sup> Nalneesha Gaur, David Baker, Larry Gioia, 2006. *Real ID The Art of Possible*, Diamond Management and Consultants Company, <http://www.diamondconsultants.com/PublicSite/ideas/perspectives/downloads/INSIGHT%20-%20Real%20ID.pdf> (accessed 15 September 2007), 6.

## **2. Systematic Alien Verification for Entitlements (SAVE)**

SAVE is an existing program within DHS managed by the U.S. Citizenship and Immigration Services (USCIS) and under the RIDA Act will be used to verify a DL/ID applicants' lawful status in the U.S. This will be the primary method to verify the lawful status of non U.S. citizens applying for a DL/ID card. The system allows agencies with authorized access to electronically verify the immigration status of applicants who present Permanent Resident Cards, EAD cards, and U.S. issued visa affixed to foreign issued passports. This system is not currently capable of providing real-time verification of the full range of applicants that fit the U.S. non citizen category in every state.<sup>102</sup>

## **3. Social Security On-Line Verification (SSOLV)**

Of the five systems proposed for electronic verification purposes, SSOLV is the only one available to DMVs for RIDA purpose. SSOLV is used to verify an applicants' Social Security Account Number or the applicants' ineligibility for an account when applying for a DL/ID card. The system is managed by the Social Security Administration and is currently accessed by every jurisdiction except Minnesota and Oklahoma.<sup>103</sup>

## **4. American Citizen Services (ACS)**

The ACS system is managed by the Department of State and it maintains records about the overseas birth, death, and other information about U.S. citizens such as passports. The system can verify electronically the validity of such documents if presented by applicants and will verify U.S. citizenship and date of birth information. However the 51 jurisdictions do not have access to this system and no date has been given when access will be granted.

## **5. State to State DL/ID Records System**

Rules for this data exchange need to be developed. This requirement differs from the other databases because it is governed by multiple statutes and multiple regulations that are currently in place in each of the jurisdictions. DHS has clearly stated that the

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<sup>102</sup> Nalneesh Gaur, David Baker, Larry Gioia, 2006. *Real ID The Art of Possible*, Diamond Management and Consultants Company, <http://www.diamondconsultants.com/PublicSite/ideas/perspectives/downloads/INSIGHT%20-%20Real%20ID.pdf> (accessed 15 September 2007), 6.

<sup>103</sup> Janice L. Kephart, "Identity and Security: Real ID in the States", *9/11 Security Solutions*, April 2007, [http://www.911securitysolutions.com/index.php?option=com\\_content&task=view&id=133&Itemid=38](http://www.911securitysolutions.com/index.php?option=com_content&task=view&id=133&Itemid=38) (accessed 12 October 2007), 13.

business rule developments required to implement this mandate should be developed from the states instead of pushed down from the Federal government so the state can maintain control of their driver data.

#### **6. Student and Exchange Visitor Information System (SAVE)**

SEVIS is a system used by colleges and universities that verifies an alien claiming student status is enrolled in school. DHS use SEVIS to communicate this information to each other. For RIDA this information will be used to verify the lawful status of foreign students applying for state issued DL/ID cards. State DMVs do not currently have access to this database.

The NCSL has recommended that states should only be required to use the electronic verification systems as they become available.<sup>104</sup> Additionally they recommended that system development schedules are consolidated and synchronized in a cooperative effort to maximize resources, ensure system efficiencies, and minimize the impact on state and Federal systems.<sup>105</sup>

### **B. 10 YEAR REENROLLMENT PROCESS**

The reenrollment process is expected to be the most costly portion of the RIDA Act because of the additional time and resources that will be required for states to re-enroll every DL/ID card holder over the next five years. The NCSL estimates that reenrolling every DL/ID card holder in the U.S. over the next five years using the RIDA Act criteria would be equivalent to issuing new DL/ID cards to seven hundred million people.<sup>106</sup> This number is a function of the time required to reenroll each card holder. For example, it will take twice as long to reenroll a person under the RIDA requirements. The NCSL was estimating two hundred and twenty five million people would need to renew their DL/ID card over the next five years prior to RIDA. After RIDA that number doubles because it will take twice as long per person to complete the renewal process. An additional fifty million people will need renewal due to the accelerated expiration

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<sup>104</sup> The Real ID Act: National Impact Analysis, September 2006, <http://www.nga.org/Files/pdf/0609REALID.pdf> (accessed 15 September 2007) 10.

<sup>105</sup> Ibid., 10.

<sup>106</sup> Ibid., 22.

dates of the DL/ID cards.<sup>107</sup> Twenty-four states have a renewal period of longer than five years and will need to accelerate them to meet the mandate. Anyone who used alternative methods of renewal, such as mail, internet, or kiosk, will now have to visit the DMV within the next five years to renew their DL/ID card, this number is estimated to be twenty million people.<sup>108</sup>

So what does this mean to DMVs? According to the NCSL it will drive the need for additional employees, additional facilities to handle the increased customer volume, additional equipment purchases to accommodate the additional employees, public education efforts to inform customers, and an increase in complaints and return visits from customers due to confusion of the new requirements.<sup>109</sup> To avoid this costly and seemingly insurmountable task of reenrollment within the next five years, the NCSL has recommended that DHS extend the reenrollment period to ten years. This would alleviate the issues for any state that currently has an expiration period of greater than five years and would give States more time to expedite everyone through the DMV. Additionally, the NCSL would like the alternative methods of renewal to continue as long as the applicant provides the appropriate documentation prior to renewal. The Assistant Secretary of Homeland Security recently announced in a conference call that DHS will expand the re-enrollment period for states to comply with. States will have until 2015 to ensure new DL/ID cards are RIDA compliant and until 2018 to get old DL/ID cards RIDA compliant.<sup>110</sup>

### **C. CERTAIN POPULATION EXEMPTIONS**

The NCSL have recommended to DHS to include a waiver of verification requirements for people who have already been issued a Federal ID such as military personnel and U.S. passport holders when the final regulations are published. This recommendation was made by the NCSL because they believe if a DL/ID applicant can

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<sup>107</sup> The Real ID Act: National Impact Analysis, September 2006, <http://www.nga.org/Files/pdf/0609REALID.pdf> (accessed 15 September 2007)22.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid., 7.

<sup>110</sup> Patrick Marley, Homeland Security May Be Backing Off Tough ID Law, JSONline, Milwaukee Journal Sentinel, Nov 3 2007, <http://www.jsonline.com/story/index.aspx?id=682195>

board an aircraft or gain entry into a federal facility with some other form of federal identification then that same person should be able to use those same federal credentials to obtain a RIDA compliant license.<sup>111</sup>

#### **E. PROVIDE FEDERAL FUNDING**

States must use funds from the Department of Homeland Security Authorization Act for Fiscal Year 2008 (H.R. 1684), which would create a new grant program to assist states with the implementation of the RIDA. The grant program would authorize \$120 million in FY 2008, \$100 million in FY 2009, and \$80 million for FY 2010, to assist states with the implementation of the RIDA. According to the NCSL the Federal funding is not enough to comply with RIDA. A recommendation was made to include some kind of mechanism in the final regulations that automatically releases a state from complying with RIDA during in fiscal year when Congress fails to appropriate funds for the Act.<sup>112</sup> In addition to including this release mechanism, the NCSL would also like to ensure that the final regulations prohibit Federal agencies from charging state transaction fees every time they access a Federal database.<sup>113</sup> The NGA has recommended that Congress should provide a specific authorization of funds over the next ten years to cover RIDA and at least \$1 billion be appropriated in fiscal year 2008 to cover the initial costs of RIDA implementation.<sup>114</sup> The NCSL has called for a repeal on the Act if the funding is not fully mandated and their recommendations made in the Impact Analysis are not implemented in the final regulations.<sup>115</sup>

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<sup>111</sup> The Real ID Act: National Impact Analysis, September 2006, <http://www.nga.org/Files/pdf/0609REALID.pdf> (accessed 15 September 2007) 5.

<sup>112</sup> Ibid., 5.

<sup>113</sup> Ibid., 5.

<sup>114</sup> David Quam, Director, Federal Relations, National Governors Association, *Understanding the Realities of Real ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards*, 26 March 2007, Statement Before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental affairs, <http://www.nga.org/Files/pdf/0703STATEMENTREALIDQUAM.PDF> (accessed 13 September 2007), 5.

<sup>115</sup> Ibid., 5.

## **D. DATA PRIVACY AND SECURITY PROBLEMS**

### **1. Data Base of Source Identity Documents Risks**

By creating a state DL/ID records system in the form of an electronic data base that can be shared both state to state and federal government to state has caused concern. A great potential risk is that terrorists, identity thieves, and criminal organizations will be tempted to exploit this large collection of valuable information documents by hacking through a state's security system. Considering that the public and federal government will trust RIDA DL/ID cards for official purposes, breaching the database in order to obtain a DL/ID will become a high priority for these criminals. Additionally, once a state's security system is breached two things will happen. First, the DL/IDs obtained through the breach will most likely be trusted as legitimate, and second, once the breach is discovered by federal or state officials, there is fear that the entire U.S. identity system could fall.<sup>116</sup> This state to state data base sharing has the potential to expose the security weaknesses of one state to the other thus making the entire system only as strong as its weakest link. This topic was discussed during the House Conference Report and the following was offered with regards to the privacy and security of data bases:

DHS will be expected to establish regulations which adequately protect the privacy of the holders on licenses and ID cards which meet the standards for federal identification and federal purposes.<sup>117</sup>

DHS has maintained the privacy and security of data bases is covered by the comprehensive security plan requirement of RIDA. However under this guidance the NPRM requires states to develop a security plan but does not provide any minimum standards for this plan such as meeting the conditions of the federal Privacy Act or the Federal Information Security Management Act of 2002 (FISMA). In essence, Congress required DHS to establish regulations for security and privacy but DHS left the responsibility of developing these regulations on the states. An argument has also been

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<sup>116</sup> Testimony of Jim Harper, Director of Information Policy Studies, The Cato Institute, 2007. *Understanding the Realities of Real ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards*, before the Subcommittee On Oversight of Government Management, The Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, United States Senate, 5.

<sup>117</sup> Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and The Tsunami Relief Act of 2005, House Conference Report 109-72, 109th Congress 1st Session, 30 September 2005, 184.



made that the privacy and security of DL/ID data bases is a federal requirement. This argument is based on the federalism authority used by DHS to justify the need for developing RIDA standards to begin with. In accordance with the federal policymaking criteria identified in Executive Order 13132, *Federalism*, (E.O. 13132) agencies must adhere to the following criteria when developing policy with federalism implications such as RIDA:

National action limiting the policymaking discretion of the states shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.<sup>118</sup>

The attenuated requirements to obtain a state issued DL/ID card were considered a problem of national significance used to justify the passing of RIDA, however the security and privacy concerns over implementing RIDA were left to the states.

## **2. Sharing of Data Bases**

The requirement for sharing the DMV data base and the information stored in the MRZ of RIDA compliant DL/ID cards is also an area of concern. One concern is how law enforcement officials use the information provided by the data base. Despite the protection provided by the Privacy Act, there is little else to prevent law enforcement officials, both federal and state, from collecting information provided by RIDA and using it a dossier to mine data and create profiles.<sup>119</sup> Additionally, any data collected for the purpose of obtaining a DL/ID card can be released to any government agency or private entity working on behalf of the government, however DMVs are prohibited from disclosing this information to any person or private entity not working on behalf of a government agency.<sup>120</sup> Under RIDA, any third party entity with a card reader will have

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<sup>118</sup> William J. Clinton, "Federalism," Executive Order 13132, 4 August 1999, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999\\_register&docid=fr10au99-133.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=fr10au99-133.pdf) (accessed 15 October 2007) section 3 (b).

<sup>119</sup> An agency "shall maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individuals about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity." 5 USC 552a(e)(7).

<sup>120</sup> Driver's Privacy Protection Act of 1994 18 USC 2721(a), prohibiting any state DMV, or officer, employee, or contractor thereof, from "knowingly disclosing or otherwise making available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record, however disclosure is provided for use by any government agency or by any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

access to the information stored in the MRZ of the DL/ID. DHS has left this problem for the states to sort out. Some states such as California, Nebraska, New Hampshire and Texas have passed laws that prohibit the collection of this by third party entities.<sup>121</sup> The AAMVA has also drafted The Model Act. The Act prohibits commercial users, except as provided for by state legislation, from using scanners to (1) obtain information printed or encoded on the card and; (2) buy, sell or otherwise obtain and transfer or disclose to any third party or download, use or maintain any data or database, knowing it to contain personal information obtained from a DL/ID card.<sup>122</sup> However the Act does allow commercial parties to access age verification information for purchasing tobacco and alcoholic beverages.

#### **F. FEDERALISM AND THE PREEMPTION OF EXISTING STATE LAW**

DHS firmly believes that even though issuance of DL/ID cards is a process owned by the states, the cards are of national significance due to their wide spread acceptance as a legitimate form of identification. Part of the federal policymaking criteria listed in E.O. 13132 holds that:

Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.<sup>123</sup>

At first glance it would appear that RIDA does not adhere to this legal principle because the federal law preempts any existing state laws on the following issues: 1) the minimum issuance standards and verification of documents presented by applicants, 2) the verification of an applicant's legal status, 3) temporary DL/ID card issuance requirements, 4) the other requirements section, and 5) physical characteristics of DL/ID

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<sup>121</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, 73.

<sup>122</sup> American Association of Motor Vehicle Administrators, Model Act to Prohibit the Capture and Storage of Personal Information Obtained From a Driver's License or ID Card, 2003, <http://www.aamva.org/aamva/DocumentDisplay.aspx?id={AA55F5A1-DB60-41BE-9542-A5659A907F6A}> (accessed 13 October 2007), section 2(a) and (b).

<sup>123</sup> William J. Clinton, "Federalism," Executive Order 13132, 4 August 1999, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999\\_register&docid=fr10au99-133.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=fr10au99-133.pdf) (accessed 15 October 2007) section 2 (a).

cards issued that do not meet RIDA requirements. However since the law is binding on federal agencies through their acceptance of state issued DL/IDs for official purposes, states are not required to issue RIDA compliant DL/ID cards. Any burden caused by a state's refusal to participate will fall on the people of that state and the choice to participate or not will ultimately be left up to those burdened citizens.<sup>124</sup> Therefore state law regarding the issuance of DL/ID cards should not preempted by RIDA.

The NCSL has raised significant concerns over the implementation of RIDA. Re-enrollment timelines, funding, electronic verification system availability, and population exemptions are their main concerns according to the NCSL. Additionally, the implications of federalism and the preemption of state law have also raised concerns. There is evidence DHS has considered at least one of these concerns through the recent announcement of the reenrollment timeline extension discussed in chapter I. However, DHS does not consider the other concerns of the NCSL as an impediment to implementing the law. The verification systems will come online, the population exemptions will be treated on a case by case basis at the discretion of the state and indicated in their compliance package, and the preemption of state law is a non issue according to DHS because the states have the option of not complying with RIDA and the law is binding on the federal agencies that accept state issued DL/ID cards as identification for admittance.

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<sup>124</sup> Notice of Proposed Rule Making, 4410-10, Department of Homeland Security, Office of the Secretary, 6 CFR Part 37, Docket No. DHS-2006-0030, RIN 1601-AA37, *Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes*, [http://www.dhs.gov/xlibrary/assets/nprm\\_realid.pdf](http://www.dhs.gov/xlibrary/assets/nprm_realid.pdf) (accessed 12 August 2007)120.

## **IV. POLICY ANALYSIS**

Analyzing RIDA is essential in determining the best course of action for implementing the Act. The recent legislative push for the repeal of RIDA and a return to the negotiated rulemaking committee described in the Intelligence Reform Act of 2004, the creation of a national ID used for official purpose, and the possibility of the DL/ID issuance process continuing on its current path are all still possible outcomes. The policy implications decision makers derive from this analysis are important for current and future U.S. Homeland Security decisions regarding identification security. Such an analysis may help these decision makers decide the best way to implement the law when drafting the final ruling and implementing future identification security initiatives.

Bardach's eight step model presents a method to analyze RIDA. The eight steps of Bardach's model are as follows:

- Step 1: Define the problem.**
- Step 2: Assemble some evidence.**
- Step 3: Construct the alternatives.**
- Step 4: Select the criteria.**
- Step 5: Project the outcomes.**
- Step 6: Confront the trade-offs.**
- Step 7: Decide.**
- Step 8: Tell your story.**

### **A. APPLYING BARDACH'S MODEL TO RIDA**

By analyzing RIDA, answers to questions one through six of Bardach's model will be formulated. The answers will form the analysis of RIDA to develop chapter IV. The chapter will finish with steps seven and eight of the model and form the conclusions of this thesis.

#### **1. Step 1. Define the Problem**

State issued DL/ID cards are too easy to obtain and since they are widely recognized as a valid form of legal identification current state issuance standards pose a threat to national security. The 9/11 report offered the following:

At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.<sup>125</sup>

## **2. Step 2. Assemble Some Evidence**

The 9/11 terrorists used falsified source documents to illegally obtain state issued DL/ID cards in order to board the aircraft used in their attack. Additionally, identify theft is enabled through the attenuated issuance standards of state DL/ID cards. The case of United 93 pilot Ziad Jarrah illustrates the first point:

On September 9, 2001, two days before 9/11 pilot Ziad Jarrah crashed a plane nose-first into a field in Pennsylvania, Jarrah was stopped for speeding. This could have led to trouble for him, and trouble for the enter 9/11 operation, but it did not. Instead, Jarrah simply drove away with a \$270 speeding ticket. This would likely be the case today as well. Why? Jarrah had obtained two driver licenses from the state of Florida, one on May 2 and the other on May 24, 2001. In addition, he fraudulently obtained a state-issued ID from Virginia on August 29. When he was stopped for speeding, we don't know which Florida license he presented the officer. Had Real ID been in effect, Jarrah would have been limited to one active license and the officer could have checked for other violations. The officer could have checked an immigration database, which could have shown he had entered the U.S. illegally at least five times. Instead, the officer had none of this information. Jarrah got away with a ticket and he still had in his pocket the Virginia ID that he might need for the 9/11 operation. The operation remained unscathed.<sup>126</sup>

The second point is illustrated by the fact that identity thieves also use multiple IDs to hide their true identity. There is no current state to state database that would allow each state to verify the applicant does not hold a DL/ID from another state. The theft of identity through the use of state issued DL/ID card was \$18 billion in 2005.<sup>127</sup>

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<sup>125</sup> Final Report of the National Commission on Terrorist Attacks Upon the United State, *The 9/11 Commission Report* (New York: W. W. Norton and Company, 2004), 390.

<sup>126</sup> Janice L. Kephart, "Identity and Security: Real ID in the States", *9/11 Security Solutions*, April 2007, [http://www.911securitysolutions.com/index.php?option=com\\_content&task=view&id=133&Itemid=38](http://www.911securitysolutions.com/index.php?option=com_content&task=view&id=133&Itemid=38) (accessed 12 October 2007) 4.

<sup>127</sup> Ibid, 4.

### **3. Step 3. Construct the Alternatives**

Using the discussion presented in this thesis, there are three alternative courses of action to RIDA that will be used for the model. The alternative courses of action are: 1) let present trends continue undisturbed by allowing states to continue to issue DL/IDs under their own current standards, 2) develop standards for DL/ID cards under the negotiated rulemaking process authorized by the Intelligence Reform Act, and 3) institute a national ID card issued and maintained by the federal government to be used for official purpose as defined by RIDA.

### **4. Step 4. Select the Criteria**

Each of these three policy alternatives will be evaluated based on the following criteria: efficiency, equity, and freedom. First, the efficiency of each alternative will be discussed. Efficiency was chosen because RIDA comes at a high cost, both in monetary terms and as a burden to the public through increased waiting times in the DMV to get a new DL/ID card. Equity was chosen to determine which one of the three alternatives spreads the burden of stopping terrorists and criminals from obtaining legal DL/ID cards fairly across the board between state and federal government as well as American citizens. Finally, freedom was chosen to determine which alternative is the least intrusive on the states rights to determine their own DL/ID card requirements. These three criteria were applied to the three alternatives to RIDA with the assumption that RIDA will be effective in stopping terrorists and criminals from illegally obtaining state issued DL/ID cards, however; RIDA is not efficient, spreads the burden of stopping terrorist and criminals from obtaining legal DL/ID cards equitably between the federal and state governments, and the citizens, and that RIDA severely limits the individual freedom of states to develop their own DL/ID issuance standards if their cards are to be used for official purpose.

### **5. Step 5. Project the Outcomes**

The first alternative of allowing the current DL/ID card issuance trends to continue undisturbed by leaving this process to the individual states would be the most efficient in terms of burden on the public and cost to implement. This option would not be equitable because the burden of stopping terrorists and criminals from obtaining state issued DL/ID cards would all back onto the federal government. However this option

leaves the states with the most freedom of developing their own standards of issuance. The second alternative of repealing RIDA and developing standards for DL/ID cards under the negotiated rulemaking process authorized by the Intelligence Reform Act would be less efficient than the first option because under this guidance states would still have to incorporate security features into their DL/ID cards and develop minimum standards for verification and issuance of the cards. It would be safe to assume that any minimum standards for the issuance of DL/ID cards developed under the second option would also cost states additional money than is currently being spent on identification security. However, this option does offer a more equitable spread of the burden of stopping terrorists from obtaining state issued DL/ID cards between the federal and state governments and the citizens. This option also will give states less freedom than the first option to develop their own standards because the process involves a negotiated rulemaking committee with representatives from every jurisdiction. In order develop an acceptable minimum standard there will undoubtedly be a fair amount of compromise between states.

The final alternative of instituting a national ID card issued and maintained by the federal government to be used for official purpose as defined by RIDA would be the most efficient in terms of costs to the state but less efficient in terms of burden to the citizens. State governments would not have to change any DL/ID issuance processes and therefore will not have to incur any costs. However, citizens will be subjected to less personal freedoms by being required to obtain and carry a national identification card. Additionally, this option runs a risk of endangering the civil liberties of the American public. This alternative is also less equitable than the first two because the burden of preventing terrorists from using fraudulently obtained identification for official purposes falls completely on the federal government and the citizens. State government incur not cost. From the states' perspective, this option will grant states the same amount of freedom to develop their own DL/ID card issuance standards as the first option because the national ID will take the state issued DL/ID cards out of consideration as means of identifying terrorists and criminals. The chart below depicts projected outcomes alternative given the criteria selected.

Alternatives	Criteria		
	Efficiency	Equity	Freedom
DL/ID Current Trends	High	Low (favors states)	High
Intel Reform Act	Low	Moderate	Low
National ID	High	Low (favors states)	High

Table 1. Outcomes Projected By Three Alternative Courses of Action

## 6. Step 6. Confront the Trade-offs

Basing this analysis on the assumption that RIDA will be effective from stopping terrorists and criminals from illegally obtaining state issued DL/ID cards, the trade-offs from each of the alternatives from RIDA will be considered. The first alternative would allow the current DL/ID card issuance trends to continue as they are now. While this alternative would be the most efficient in terms of cost and burden to applicants, and would provide states the most freedom to develop their own issuance standards, it will not be equitable because the burden of stopping terrorists and criminals from obtaining DL/ID cards will fall completely on the federal government. But perhaps most importantly it will do little to stop terrorists and criminals from obtaining state issued DL/ID cards and would not improve identification security in the context of what RIDA is designed to do. This system can only be as strong as its weakest link, and in this case, criminals and terrorists would exploit states with relaxed issuance standards. For this option one must consider this trade-off: Are the risks associated with not improving DL/ID card identification security worth the benefits of efficiency and freedoms?

The second alternative of developing issuance standards using the negotiated rulemaking committee proposed by section 7212 of the Intelligence Reform Act is less efficient, provides a greater degree of freedom for states to develop their own standards than the RIDA, and is more equitable in spreading the burden of stopping terrorists and criminals from obtaining DL/ID cards between the federal and state governments, as well as the citizens. The trade-off for this alternative is the time associated with developing standards under the negotiated rule-making committee. An important part of this option requires that any regulations implemented by the negotiated rulemaking committee “not infringe on the state’s power to set criteria concerning what categories of individuals are



eligible to obtain a driver's license or personal identification card from that state" and "not require a state to comply with any regulation that conflicts with or otherwise interferes with the full enforcement of state criteria concerning the categories of individuals that were eligible to obtain a driver's license".<sup>128</sup> This feature would undoubtedly prolong the process of defining minimum issuance standards given the wide differences between each of the states. Additionally, this option would not be as effective in aiding law enforcement identification verification because it does not call for a state to state data information exchange.

The third option of instituting a national ID card issued and maintained by the federal government would be efficient in terms of cost to the state, but not efficient in terms of cost to citizens. The option is not equitable in sharing the burden between state and federal government. However this option does allow states the most freedom in developing their own DL/ID card issuance standards because this option leaves state government out of the equation of securing identification. For this option, one must consider this trade-off: Are the dangers to civil liberties worth the benefits of efficiency and state freedom to develop their own DL/ID standards?

## **7. Step 7. Decide**

This thesis finds that the federal government has a strong case for implementing RIDA. Additionally, this thesis finds that the NCSL does not disagree with the need to implement the policy but does have legitimate concerns over the implementation of the law. The concerns are funding and the quick timeline for implementation. After applying Bardach's model to the policy this thesis finds that none of the three policy alternatives would accomplish the same identification security goals of RIDA except in the extreme case of instituting a national ID, which is politically unacceptable. RIDA is a suitable compromise between the federal government who has the responsibility of protecting our national security and the states that have the authority to decide what is best for their citizens given our constitutional arrangement.

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<sup>128</sup> Public Law 108-458, The Intelligence Reform and Terrorism Prevention Act of 2004, 108<sup>th</sup> Congress Second Session, 17 December 2004, [http://www.nctc.gov/docs/pl108\\_458.pdf](http://www.nctc.gov/docs/pl108_458.pdf) (accessed 28 August 2007) 193.

## **8. Step 8. Tell Your Story**

State issued DL/ID cards are easy to obtain and widely accepted as a valid form of identification. The 9/11 terrorists exploited this weak link in security to plan and execute their attack. The federal government responded to this security threat enacting RIDA and creating minimum standards for the issuance of state DL/ID cards. The standards must be adopted by state DL/ID issuing agencies if the cards are to be accepted by federal agencies as a valid form of identification for official purposes. The NCSL has presented valid concerns over the implementation of RIDA. By analyzing the federal governments view on implementing RIDA and analyzing the NCSL's view on implementing RIDA, a list of the most likely alternatives to RIDA was created. By applying Bardach's model, RIDA was evaluated to be the most effective policy option given the goals of strengthening identification security.

To summarize this section, the problem of terrorists and criminals fraudulently obtaining DL/ID cards and using them to conduct illegal activity could be mitigated by tightening identification security standards for the issuance of DL/ID cards such as those enacted by RIDA. The projected outcomes of the three alternatives to RIDA: 1) let present trends continue undisturbed by allowing states to continue to issue DL/IDs under their own current standards, 2) develop standards for DL/ID cards under the negotiated rulemaking process authorized by the Intelligence Reform Act, and 3) institute a national ID card issued and maintained by the federal government to be used for official purpose as defined by RIDA were analyzed and the results are displayed in Table 1. Using the assumption that RIDA is not efficient but will stop terrorists and criminals from fraudulently obtaining DL/ID cards and is equitable, I have concluded that RIDA is the most viable policy option.

## **B. CONCLUSION**

The state issued DL/ID identification card is the most commonly accepted form of identification in the U.S. Holding a valid DL/ID card provides access to activities and privileges far beyond its intended purpose of driving a vehicle. The widespread acceptance of the DL/ID card as a legitimate form of identification makes it a target for criminals and terrorists who wish to harm innocent civilians. Given the alternatives to

identification security, I argue that strengthening the security of state issued DL/ID cards only makes sense. Based on my analysis it is my opinion that the provisions of RIDA provide the necessary steps that give states the flexibility needed to implement the law. These steps of RIDA must be taken to improve identification security. Six years have passed since the events of 9/11, and despite the 9/11 commission's recommendation to develop federal standards for the issuance of DL/ID cards, federal standards have not been implemented.

Not implementing RIDA and allowing current DL/ID card issuance trends to continue will not strengthen identification security to the level of RIDA. Repealing RIDA and going back to the negotiated rulemaking committee of the Intelligence Reform Act will only prolong the development of minimum standards and they will not be as secure as the minimum standards established by RIDA. The efforts implemented by many states so far should not be undone by repealing the Act or undermined by another state with weaker issuance standards. Any state that disagrees with the requirements can exercise the option of not issuing RIDA compliant DL/ID cards. Requiring citizens to carry a national ID is not politically acceptable and places an undue burden on U.S. citizens. The federal government obviously decided against a national ID by choosing the state issued DL/ID card as the premier identification document for U.S. citizens. However, the failure to successfully implement RIDA either by state non compliance or a repeal of the Act could force the federal government to use a national ID card instead. Clearly RIDA is the better alternative because it spreads the burden of stopping terrorists and criminals from fraudulently obtaining DL/ID cards between the state and federal government as well as citizens.

Many states realize this and are working through the challenges of meeting RIDA requirements and taking the necessary steps towards identification security. Additionally, the federal government has listened to the NCSL on the compliance timeline for RIDA by extending the compliance period to ten years as requested in the NCSL's Impact Assessment. Privacy concerns and constitutional issues have arisen but the reality is that RIDA does not threaten privacy and is constitutionally legal. The minimum levels of identification security provided by RIDA will actually enhance privacy and security. States will maintain control of their own data bases and must meet a federally accepted

minimum standard of security. This will raise security standards in states that currently have weak procedures. The state that provides the weakest identification security link will be mitigated by RIDA. Additionally, the federal initiatives to provide a means of electronic verification for source documents will provide another level of protection from individuals who seek to obtain a DL/ID card by fraudulent means such as using a false social security number. RIDA is constitutionally sound because it actually requires nothing from the states. The law is binding on federal agencies accepting state issued DL/ID cards for official purposes. States have the option of non compliance or can choose to exceed the minimum standards created by RIDA.

RIDA also provides an additional level of security needed by our law enforcement officers. In a letter to Senate Majority Leader Harry Reid, Chuck Canterbury, the National President of the Fraternal Order of Police provided this:

Real ID is very much of an officer safety issue. Law enforcement officers need to have confidence that the documents presented to them to establish the identity of a given individual are accurate. Officers rely on these documents during traffic stops and other law enforcement actions to access information related to that individual's criminal history. No police officer wants to be in the dark about the fact that he may have detained a wanted or violent criminal who has simply obtained false identification. This places both the officer and the public he is sworn to protect in greater danger. For this reason, the FOP will strongly oppose any bill or amendment that would repeal the Real ID Act.<sup>129</sup>

Despite the benefits of RIDA, Congress and DHS have failed the states in two matters. Congress must ensure funding is provided in a timely manner if states are required to comply in a timely manner. DHS must issue the final regulations for states to comply. Both the NCSL and DHS have agreed on the estimated cost of RIDA, 23 billion dollars, but only a fraction of that cost has been allocated to date, 300 million. This lack of funding is a significant roadblock to the implementation of RIDA. States were given an extension of the time compliance period, but without the funds or resources they simply will not be able to implement RIDA. The final regulations as of the time of this

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<sup>129</sup> Chuck Canterbury, National President of the Fraternal Order of Police, Letter to Majority Leader Reid on REAL ID Act, 21 February 2007, [http://www.fop.net/servlet/display/news\\_article?id=349&XSL=xsl\\_pages%2fpublic\\_news\\_individual.xml](http://www.fop.net/servlet/display/news_article?id=349&XSL=xsl_pages%2fpublic_news_individual.xml) (accessed 12 September 2007).

writing have not been published. DHS cannot expect states to fully comply with RIDA in a timely manner without these regulations. The further delay in publishing the regulations and the lack of funding will be the two most significant factors in stopping states from complying with RIDA.

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